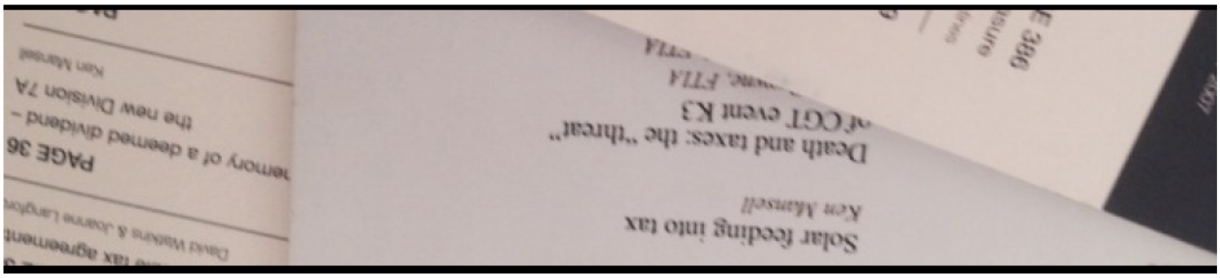
Tax Rambling *The rants of a tax nerd*



GST and Property Development – Change in use and the 5 year rule

1. Intro

This paper considers adjustments to the input tax credit claims by property developers who either rent out the properties they develop while waiting for a sale (always intend to sell the property but while they wait for the sale get some rental income) or just decide that they no longer want to (or can) sell the property and make the decision to rent it out going forward and not pursue a sale. For completeness, the paper also considers the 5 year rent rule that can exclude a property from being new residential property.

Author:
Ken Mansell - 0429 566 516
ken@taxrambling.com
www.taxrambling.com

Sources:
Goods and Services Tax Ruling GSTR 2009/4 Goods and services tax: new residential premises and adjustments for changes in extent of creditable purpose (https://www.ato.gov.au/law/view/document?DocID=GST/GSTR20094/NAT/ATO/00001)

Goods and Services Tax Ruling GSTR 2003/3 Goods and services tax: when is a sale of real property a sale of new residential premises? (https://www.ato.gov.au/law/view/pdf?DocID=GST%2FGSTR20033%2FNAT%2FATO%2F00001&filename=law/view/pdf/pbr/gstr2003-003c4.pdf&PiT=99991231235958)

2. Before we consider any change in purpose, we must consider the original purpose

I get asked…

> *"What if we claimed all the input tax credits when we built the residential premises but now we have rented it out for 5 years. Does this mean I get all the input tax credits from building it and then do not remit GST on the sale under the five year rule?"*

To which I answer…

> *"What was your initial purpose when you built the residential premises? Was it to build it to sell, build it to rent, or a combination of both? Because if your initial purpose was built it to rent, then you incorrectly claimed all the input tax credits, if your initial purpose was built it to sell, then it appears your purpose changed and you should have given back some of the input tax credits in increasing adjustments, and if your initial intension was a bit of both, then you still have probably overclaimed input tax credits."*

Before we discuss whether you have held the property and rented it out for a continuous period of five year, before we discuss if there has been a change in purpose, first we need to discuss what was your initial purpose in building the residential property

There are only three purposes when you are building new residential property as a part of your enterprise (obviously if you build it to live in it then it is private and there is no claim to input tax credits)… sell it, lease it or do a bit of both… Therefore:

- If an entity constructs new residential premises and the entity plans, as evidenced by an objective assessment of the facts and circumstances, to only sell those premises by way of a taxable supply as part of its enterprise, the acquisitions made in constructing the premises will be for a creditable purpose and the entity will claim input tax credits.

- If an entity constructs new residential premises for the purpose of sale but intends to lease the premises for a period of time prior to the sale, and an objective assessment of the facts and circumstances supports this dual planned use, the entity's acquisitions will be partly creditable.

  This will require an apportionment and here is the Commissioner's example in GSTR 2009/4. So to be clear, if you tell me your purpose was to sell but to lease for some time before sale, you should not have claimed all the input tax credits 9and we will see in the next section how you do the apportionment).

  > ***Example***
  >
  > *Kim is a property developer. Kim recognises that the market for selling new residential premises has slowed significantly but is expected to pick-up in approximately two years. She decides to build new residential premises for sale as part of her property development enterprise but makes a decision to lease the premises for 2 years in order to allow the market to improve. An objective assessment of the facts and circumstances supports this dual planned use. In particular, Kim's business plan at the time of making the acquisition and the loan application documents reflect this intended use of the premises.*
  >
  > *The acquisitions Kim makes in constructing the new residential premises are for two purposes - being the making of an input taxed supply of residential premises by way of lease and a taxable supply of new residential premises.*
  >
  > *Kim's acquisitions are made in carrying on her enterprise and are for a creditable purpose except to the extent they relate to the making of the input taxed supplies. That is, the acquisitions are partly creditable. Kim will need to determine the extent of creditable purpose using a fair and reasonable method of apportionment.*

- If an entity constructs new residential premises to use solely by way of leasing the residential premises, and this planned use is supported by an objective assessment of the surrounding facts and circumstances, the entity's acquisitions will relate solely to making supplies that would be input taxed, and will not be made for a creditable purpose. The entity will not be entitled to input tax credits in relation to the acquisitions.

As a property developer, it is likely that ~~you claimed all your input tax credits~~… I mean you constructed the new residential premises to only sell those premises by way of a taxable supply as part of your enterprise… but now you have not just sold it and are getting lease income and so ~~your BAS is wrong~~… I mean your purpose has changed from your initial purpose. And this means we have to make an adjustment to the input tax credits we have claimed. How do we do this?

3. And now you change your "built for just sale" purpose to…

3.1 Possibility 1 – still want to sell but lease short term till sale

Let's start with the simplest of examples that avoids all the needs for multiple "adjustment periods" as there is only one Adjustment period – When you claimed all the input tax credits on development, but you rented it out for a short period before the sale occurred.

Have a look at this example

> *Jane is registered for GST and constructed new residential premises for sale and was entitled to full input tax credits on her acquisitions. However, because the market for new premises was slow Jane leased the premises for six months before the premises were finally sold. Jane received $15,000 in rent over the six months. The premises were sold for $500,000. There had been no private or domestic use of the premises.*
>
> *At the end of the next adjustment period following the sale, Jane calculates the extent of creditable purpose using the formula above as follows:*
>
> $$\$500{,}000 \,/\, (\,\$500{,}000 + \$15{,}000\,) = 97.09\%$$
>
> *In her 30 June BAS Jane will return 2.91% of the claimed input tax credits during the development.*

There is nothing in the GST Act that states how you do this adjustment, but this is the method the Commissioner expect us to use in a case like this – where we still want to sell but we are getting rental income from it. He calls it an "output based indirect method", and it is based on the consideration received or liable to be received in respect of any taxable supply as compared to any input taxed supply. Thus, the extent to which new residential premises were applied for a creditable purpose can be determined by the following formula:

$$\frac{\textit{Consideration for the taxable supply of the premises}}{\textit{Consideration for the taxable supply of the premises + consideration for the input taxed supplies of residential premises by way of lease}}$$

3.2 Possibility 2 – still want to sell but lease longer term till sale

But what do we do if we are still leasing it so we don't know the actual sale price yet? We are still looking to sell it but we just have not found the right buyer or time yet. Have a look at this example…

> *John is registered for GST and has quarterly tax periods. He constructed new residential premises for the purpose of sale and was entitled to full input tax credits on his acquisitions. One particular acquisition of construction services was made on 1 October 2016 for $55,000 (GST inclusive). The premises were completed on 1 February 2017. John continued to hold the premises for the purpose of sale but also commenced leasing the premises for residential accommodation on 1 April 2017. John received rental income of $2,500 per month and expected to sell the premises for $500,000. John has continued to retain the dual concurrent application since 1 April 2017.*
>
> *The first adjustment period in relation to the acquisition of construction services is the period ending 30 June 2018. There are 21 months in the relevant period between the time of the acquisition on 1 October 2016 and the end of the first adjustment period on 30 June 2018.*
>
> *For the six months from 1 October 2016 to 31 March 2017 John applied the premises solely for a creditable purpose, that is, an extent of creditable purpose of 100%.*
>
> *For the 15 months from 1 April 2017 to 30 June 2018 John has applied the premises for both a creditable purpose and a non-creditable purpose. John works out the extent of creditable purpose for the relevant period by using an output based indirect method (using estimated sales consideration) as follows:*

$$\$500,000 / (\$500,000 + \$37,500) = 93.02\%$$

3.3 Possibility 3 – After some time trying to just sell it, you give up trying to sell it and just lease it out

This is where the Commissioner states we should now use an apportioning methodology that is not based on considerations received, but rather based on days. Have a look at this example:

> *Assume the facts are the same as for the example above with John. However, rather than continuing to hold the premises for sale as part of the enterprise John decided on 1 April 2017 to hold the premises solely for the purpose of leasing.*
>
> *Therefore, for the six months from 1 October 2016 to 31 March 2017 John applied the premises solely for a creditable purpose, that is, an extent of creditable purpose of 100%.*

For the 15 months from 1 April 2017 to 30 June 2018 John has applied the premises solely in relation to making input taxed supplies, that is, an extent of creditable purpose of 0%.

John applies a time based apportionment to the application for a creditable purpose to ascertain the extent of creditable purpose for the relevant period (this is because for the rest of the period the extent of creditable purpose is 0%):

(6 mths / 21 mths x 100%) = 28.57%

And yes, we will come back to adjustment periods and for how long we have to do this below.

3.4 Possibility 4 – Try to sell, then try to sell while renting, then give up on sale and just rent it out

This is probably the most common in a market that has turned down (although the banks might have something to say about this arrangement). Have a look at this example:

Assume the facts are the same as for the example two above with John. John continued to apply the premises for the dual concurrent application of the creditable purpose of sale and the non-creditable purpose of leasing from 1 April 2017 to 31 December 2017. However, on 1 January 2018 John decided to hold the premises solely for the purpose of leasing.

104. For the 15 months from 1 October 2016 to 31 December 2017 John applied the premises for a creditable purpose to some extent. For the remainder of the relevant period John applied the premises solely in relation to making input taxed supplies, that is, an extent of creditable purpose of 0%.

John works out the extent of creditable purpose for the relevant period in two steps. First, John uses an output based indirect method (using estimated sales consideration) as follows:

$500,000 / ($500,000 + $37,500) = 93.02%

John now needs to undertake a further apportionment to reflect the fact that the premises were not held for the purpose of sale for the entire relevant period. This is calculated by adjusting the percentage above by the proportion of the relevant period for which the premises were being held for the purpose of sale:

93.02% x 15 mths / 21 mths = 66.44%

There are two changes of purpose, and so there are two reductions in the percentage of input tax credits that can be claimed.

So as you can see, we need to:

- Work out our initial purpose… which was always to sell it so we could claim all the input tax credits.

- Then make an adjustment for where we used it to get rental income, even though we still were looking to sell it.

- Then make an adjustment for when we finally give up trying to sell it and just decide to rent it out.

4. How does this work itself out in our Activity Statements?

As you have already guessed, this is all very easy when we look back over the entire arrangement with 20/20 hindsight, but this is not the case in the real world. We don't know exactly when intentions changed or when a sale might occur.

But the GST legislation has a process for making these adjustments in Division 129. Section 129-1 states:

> *The extent to which an acquisition or importation is for a creditable purpose affects the amount of the resulting input tax credit. When the extent of creditable purpose is changed by later events, adjustments … may need to be made.*

Before we go into the mechanics of Division 129, and especially how this applies to property developers, it is important to understand that the Division is not correct. What I mean is that everyone knows Division 129 does not, and cannot, get the perfect adjustment. It juggles precision with complexity and comes to a compromise.

This is best explained in the recent AAT case of Domestic Property Developments Pty Ltd as trustee for the Dals Property Trust and Commissioner of Taxation [2022] AATA 4436…

> *In broad terms, the practical effect of Division 129 adjustments is to adjust an entity's input tax credit ("ITC") entitlement on acquisitions where the extent of the creditable purpose pertaining to the actual application of the thing acquired differs from its intended application at the time of acquisition…*
>
> *However, Division 129 does not operate with such precision. It provides only a measure of "rough justice". The adjustments required achieve at best an approximation of the equivalent of the ITC entitlement that would have arisen if the actual application of the thing acquired had been known at the outset. That is especially so in the context of construction costs where any measure of the extent of creditable purpose will necessarily be a proxy-based approximation – for example, time or revenue-based proxies - and the choice of proxy may give rise to significantly different outcomes. There is inevitably a degree of arbitrariness and no doubt numerous examples could be identified where, on either the applicant's or the Commissioner's preferred approach, outcomes would favour taxpayers or the*

revenue. These attributes reflect the reality that legislation commonly gives effect to compromises that balance competing objectives, including the precision with which competing policy objectives are pursued and considerations of complexity and practicality. Inevitably, there are contestable cases at the margin.

4.1 Minor adjustments

While not generally the case for property development, an entity will not have to make an adjustment for a change in creditable purpose if the value of the purchase was $1,000 (GST-exclusive) or less.

4.2 Adjustment periods

The next thing we need to establish is what are "Adjustment periods". These are the reporting periods in which has to account for any adjustments in an activity statement.

An adjustment period is a reporting period that both:

- starts at least 12 months after the end of the reporting period you claimed your GST credit in; and
- ends on 30 June.

These adjustment periods could go on forever, but for simplicity there is a maximum number of adjustment periods in which you make adjustments.

GST-exclusive value of the acquisition	**Adjustment periods**
$1,000 to $5,000	Two
$5,001 to $499,999	Five
$500,000 or more	Ten

4.3 What adjustment must be made in each adjustment period

Division 129 has a four step process to work out what the adjustment will be for each adjustment period. A summary is included below, but trust me it makes much more sense when you see it in a example (which follows).

Step 1: *Work out the extent to which you have used the purchase or importation for a creditable purpose during the period, starting from when you made your purchase* *or importation and ending at the end of the adjustment period. Work this out as a percentage.*

Step 2: *Work out one of the following, as applicable, as a percentage.*

- *If you have not previously made an adjustment for a change in creditable purpose, work out the extent to which you had originally planned to use the purchase or importation for a creditable purpose.*

- *If you have previously made an adjustment for a creditable purpose, work out the extent to which you used the purchase or importation for a creditable purpose in respect of the last adjustment.*

Step 3: *Compare the percentages worked out at Step 1 and Step 2 (increasing adjustment if Step 2 percentage is more than Step 1 percentage)*

Step 4: *Calculate the adjustments by multiplying the full amount of GST credit by the difference between the percentages at Step 1 and Step 2. The 'full amount of GST credit' means the amount of GST credit you would have been entitled to claim if you had used the purchase or importation entirely for a creditable purpose.*

4.4 An example of what to put in each BAS

In summary, at the end of each adjustment period for relevant acquisitions, an entity will have to consider whether or not there has been a change in extent of creditable purpose.

Then with this information we need to (if there has been a change in creditable use):

- identifying the relevant adjustment periods for multiple acquisitions;

- identifying changes in extent of creditable purpose;

- calculating adjustments for adjustment periods while the premises continue to be leased; and

- calculating adjustments for the final adjustment period following the sale of the premises.

There is no way to get your head around this other than to see it in an example. It is going to be a very long example, but this is how this works itself out in a series of BASs…

David, a property developer, is registered for GST and accounts for GST on a quarterly basis using accruals. The following occurs:

30 Aug 2016	*Acquires a block of land for $220,000 (GST inc) no margin scheme*
10 Sep 2016	*Contract with a builder of $198,000 (GST inc)*
10 Oct 2016	*Progress payment of $55,000*

31 Jan 2017 Progress payment of $77,000
2 Apr 2017 Final payment of $66,000

At the time of purchasing the block of land and throughout the period of construction, David planned to sell the premises on completion and thus make a taxable supply of new residential premises. The input tax credit for the purchase of the land ($20,000) is claimed in the September 2016 BAS. An input tax credit of $5,000 is claimed in the December 2016 BAS, an input tax credit of $7,000 is claimed in the March 2017 BAS, and an input tax credit of $6,000 is claimed in the June 2017 BAS.

David started marketing the premises for sale prior to them being completed. However, after the premises were completed it was clear that the market had slowed significantly. David decided to lease the premises to cover some of the holding costs. The premises were leased from 1 August 2017 until 31 May 2020. David leased the premises for $2,000 per month. However, throughout this period David continued to hold the premises for the purpose of sale as part of his enterprise. This is supported by objective evidence. In particular, David's business plan did not change and was in accordance with past projects where premises were sold as soon as possible. David also continued to market the premises for sale.

David finally sold the premises on 31 May 2020 for $500,000.

STEP 1 - Identifying the adjustment periods

Each of the progress payments will be treated as a separate acquisition for the purposes of Division 129. The first adjustment period is a tax period that ends on 30 June and commences at least 12 months after the end of the tax period to which each acquisition was attributed. The relevant adjustment periods are as follows:

Acq date	*Acq cost (GST excl)*	*First adj period*	*Num of adj periods*
30 Aug 2016	*$200,000 (land)*	*Tax period ending 30 Jun 2018*	*5*
10 Oct 2016	*$50,000*	*Tax period ending 30 Jun 2018*	*5*
31 Jan 2017	*$70,000*	*Tax period ending 30 Jun 2018*	*5*
2 Apr 2017	*$60,000*	*Tax period ending 30 Jun 2019*	*5*

Adjustments for the tax period ending 30 June 2018

Throughout the period between the acquisitions and the ultimate sale of the new residential premises David has applied the premises in carrying on his enterprise for the creditable purpose of sale and has also applied the premises in relation to making input taxed supplies of residential premises by way of lease. David needs to determine the extent of creditable purpose for each of the acquisitions given the dual application throughout the period. This requires an apportionment on a fair and reasonable basis.

In relation to the acquisition of the land, from 30 August 2016 to 31 July 2017 the extent of creditable purpose is 100% (as it has been held for the purpose of sale of the new residential premises). From 1 August 2017 until 30 June 2018 there has been a dual application as the new residential premises have been held for the purpose of sale while also being applied in relation to making input taxed supplies of residential premises by way of lease. The extent of creditable purpose for the relevant period can be calculated by applying an output based indirect method (using estimated sales consideration). During this period David has leased the premises for 11 months at $2,000 per month. This is a total gross rental income of $22,000. The estimated selling value of the premises based on the real estate agent's comparative sales analysis was $550,000. The extent of creditable purpose for the relevant period up to 30 June 2018 is thus:

$550,000 / ($550,000 + $22,000) = 96.15%

In relation to the acquisitions for which progress payments were made on 10 October 2016 and 31 January 2017, the process for determining extent of creditable purpose is the same as for the land. As set out in paragraph 152 of this Ruling, for the relevant period up to 30 June 2018 the extent of creditable purpose is 96.15% applying the output based indirect method (using estimated sales consideration).

Applying the method statement above in respect of the land:

Step 1 - The extent to which the thing has been applied for a creditable purpose during the period 30 August 2016 to 30 June 2018 is 96.15%.

Step 2 - The extent to which the thing was acquired for a creditable purpose is 100%, as the planned use at the time of the acquisition was not to make any input taxed supplies.

Step 3 - As the actual application of the thing acquired is less than the intended or former application of the thing, David will have an increasing adjustment.

The increasing adjustment in respect of the ***land*** *is calculated as follows:*

= $20,000 x (100% - 96.15%)
= $770

The increasing adjustment in respect of the ***first progress payment*** *on 10 October 2016 is calculated as follows:*

= $5,000 x (100% - 96.15%)
= $192.50

The increasing adjustment in respect of the ***second progress payment*** *on 31 January 2017 is calculated as follows:*

= $7,000 x (100% - 96.15%)
= $269.50

David has a total increasing adjustment of $1,232 for the tax period ending 30 June 2018 and must include the adjustment in his business activity statement for this period.

Adjustments for the tax period ending 30 June 2019

As for the tax period ending 30 June 2018, adjustments need to be considered for each acquisition. This is the second adjustment period for the acquisition of the land and the first two progress payments. It is the first adjustment period for the final progress payment made on 2 April 2017.

In relation to the acquisition of the land, from 30 August 2016 to 31 July 2017 the extent of creditable purpose is 100% (as it has been held for the purpose of sale of the new residential premises). From 1 August 2017 until 30 June 2019 there has been a dual application as the new residential premises have been held for the purpose of sale while also being applied in relation to making input taxed supplies of residential premises by way of lease. The extent of creditable purpose for the relevant period up to 30 June 2019 can be calculated by applying an output based indirect method (using estimated sales consideration). During this period David has leased the premises for 23 months at $2,000 per month. This is a total gross rental income of $46,000. The estimated selling value of the premises was revised based on the real estate agent's updated comparative sales analysis to an amount of $480,000. The extent of creditable purpose for the relevant period up to 30 June 2019 is thus:

$480,000 / ($480,000 + $46,000) = 91.25%

In relation to the acquisitions for which progress payments were made on 10 October 2016, 31 January 2017 and 2 April 2017 the process for determining extent of creditable purpose is the same as for the land. As set out in paragraph 163 of this Ruling, the extent of creditable purpose is 91.25% applying the output based indirect method (using estimated sales consideration).

Applying the method statement in respect of the land:

Step 1 - The extent to which the thing has been applied for a creditable purpose during the period 30 August 2016 to 30 June 2019 is 91.25%.

Step 2 - The intended or former application as calculated above for the adjustment period ending 30 June 2018 was 96.15%.

Step 3 - As the actual application of the thing acquired is less than the intended or former application of the thing, David will have an increasing adjustment.

The increasing adjustment in respect of the land is calculated as follows:

= \$20,000 x (96.15% - 91.25%)
= \$980

The increasing adjustment in respect of the first progress payment on 10 October 2016 is calculated as follows:

= \$5,000 x (96.15% - 91.25%)
= \$245

The increasing adjustment in respect of the second progress payment on 31 January 2017 is calculated as follows:

= \$7,000 x (96.15% - 91.25%)
= \$343

The increasing adjustment in respect of the final progress payment on 2 April 2017 is calculated as follows:

= \$6,000 x (100% - 91.25%)
= \$525

David has a total increasing adjustment of \$2,093 for the tax period ending 30 June 2019 and must include the adjustment in his business activity statement for this period.

Adjustments for the tax period ending 30 June 2020

David sold the premises as new residential premises on 31 May 2020. The tax period ending 30 June 2020 is the final adjustment in relation to the acquisitions. Given that the premises have been sold, an output based indirect method of apportionment provides a fair and reasonable basis of apportionment. The apportionment for extent of creditable purpose can be calculated according to the following formula:

Consideration for the taxable supply of the premises / Consideration for the taxable supply of the premises plus consideration for the input taxed supplies of residential premises by way of lease

The premises were sold for \$500,000. The premises were leased for a total of 34 months up to the end of May 2020 - a total rental income of \$68,000. The extent of creditable purpose under the formula is thus:

\$500,000 / (\$500,000 + \$68,000) = 88.03%

David will then need to apply the method statement contained in section 129-40 to each of the relevant acquisitions.

Step 1 - The extent to which the thing has been applied for a creditable purpose during the period 30 August 2016 to 30 June 2020 is 88.03%.

Step 2 - The intended or former application as calculated above for the adjustment period ending 30 June 2019 was 91.25%.

Step 3 - As the actual application of the thing acquired is less than the intended or former application of the thing, David will have an increasing adjustment.

The increasing adjustment in respect of the land is calculated as follows:[59]

= $20,000 x (91.25% - 88.03%)
= $644

The increasing adjustment in respect of the first progress payment on 10 October 2016 is calculated as follows:

= $5,000 x (91.25% - 88.03%)
= $161

The increasing adjustment in respect of the second progress payment on 31 January 2017 is calculated as follows:

= $7,000 x (91.25% - 88.03%)
= $225.40

The increasing adjustment in respect of the final progress payment on 2 April 2017 is calculated as follows:

= $6,000 x (91.25% - 88.03%)
= $193.20

David has a total increasing adjustment of $1,223.60 for the tax period ending 30 June 2020 and must include the adjustment in his business activity statement for this period.

So is it appropriate that David purchased land with GST of $20,000 on it, but due to leasing it for a series of years while trying to sell it he can only claim $17,606 in input tax credits? I don't know but that is how it works.

4.5 What if we go past the number of adjustment periods?

Remember these adjustment rules are not exactly correct, as they look to get close to the right answer without too much work and complexity.

So, what would have happened in the example above, where David's transactions had 5 adjustment periods, if he had not sold the property after these five periods had occurred? Nothing.

Once you have done the 5 adjustments as he continues to hold the property for sale unsuccessfully, and continues to rent it out you no longer worry about it.

5 But What About The 5 Year Rule?

Section 40-75 of the GST Act has the definition of new residential property and it states that residential premises are not new residential premises if the premises have ***only*** been used for making input taxed supplies of residential rental for the period of at least 5 years since the premises first became residential premises, the premises were last substantially renovated, or the premises were last built.

NOTE:

*For this to apply the premises must has only be used for making input taxed supplies. Therefore this 5 years rule **does not apply if** the residential property has been actively marketed for sale while it is rented.*

A property developer who built a property for sale, would need to make a decision to change the purpose of the property from being for sale, to being for rent, make the appropriate adjustments giving back most of the input tax credit claims, rent the property for 5 years, and only after all of this occurring would the 5 year rule apply.

The Commissioner and the AAT have both held that the 5 years must be a continuous period. A continuous period is not broken by short periods between tenancies where the premises are actively marketed for rent following the departure by a previous tenant. However, a continuous period would not include periods when the premises are used for a private purpose or left vacant with no attempt to lease, hire or licence.

6. Where it all started

When I get asked…

> *"What if we claimed all the input tax credits when we built the residential premises but now we have rented it out for 5 years. Does this mean I get all the input tax credits from building it and then do not remit GST on the sale under the five year rule?"*

What the property developer is asking is, can I claim all of the GST back on building the residential premises, and then hold the property for 5 years and then not have to remit any GST on the sale price?

There are so many problems with this idea, and we have discussed this above in detail. But in summary:

- If you start renting out a new residential premises you have built and claimed all the GST back on, even if you are only renting it out while you are actively looking for a purchaser, there will be an adjustment event and you will have to repay some of the GST. The more rent you get, the more GST you have to pay back.

- If you decide to stop looking to sell the property and just hold it for rent, then there will be another adjustment event and you will need to repay some of the GST. The more time you hold it for rent compared to the time you held it for sale, the more GST you have to pay back.

- If you are hoping to hold a property for 5 years to avoid having to remit GST on the sale, you need to decide to stop looking to sell the property and just hold it for rent for the 5 years to start accruing. And as the previous bullet point discussed this will mean you will need to repay much of the GST you claimed during the development.

Let do a quick example…

> *Ken pays $1,100,000 to get a new residential premise built (it takes 6 months to build) and claims back the $100,000 in GST (no margin scheme involved) as he wants to sell the property.*
>
> *After 6 months of trying to sell it he decides to take it off the market and rent it out for 5 years so he can sell it without having to remit GST on the sale in the future.*
>
> *This change in purpose is an adjustment event and over the next 5 years there will be recoveries of some of the $100,000 claimed (if he does not sell it after five years but continues to rent it, there will be ten years of adjustment events).*
>
> *By the end of the five years of renting, Ken will have held the property for 6 years (6 months being developed and trying to sell for 6 months) of which 5 years were used for rent. Therefore, over these 5 years of adjustments 5/6th of the GST claims would have been repaid to the ATO leaving only $16,666 of the $100,000 in GST paid recovered by Ken (if Ken held the property for rent for 10 years, 10/11th of the GST claim would be repaid to the ATO meaning Ken only recovered just over $9,000 of the $100,000 of GST he paid for the development)*